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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,455	08/08/2003	Jennifer A. Gaul	410058	3437
30955 7590 12/24/2008				
LATHROP & GAGE LC				
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SUITE 300				
BOULDER, CO 80301				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
12/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/637,455

Applicant(s)

GAUL ET AL.

Examiner

Lien T. Tran

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-9 and 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 9/18/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 5-9, 11-12, 16-17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al in view of Grace et al. and applicant's disclosure of prior art.

Murphy et al disclose a composition comprising wheat protein. The protein is present in amount of at least .1 parts per 100 parts of flour. When the protein is present in an aqueous dispersion that is added to a flour or batter formulation, the protein in the dispersion amount to .1-8 parts per 100 parts of flour. The composition is added to dough or batter to make reduce-fat or fat free baked goods such as doughnuts, cakes, cookies etc... The wheat protein can be wheat protein isolate. (see col. 1 lines 45-62, col. 3 lines 32-36, col. 5 lines 15-26 and col. 7 lines 17-23)

Murphy et al do not disclose the wheat protein isolate containing lactic acid or sulfite or both and the donut is cake donut.

Applicant discloses in the specification the wheat protein isolate used is commercially available wheat protein Arise 5000 which contains wheat gluten, lactic acid and sulfite.

Grace et al disclose a method for reducing the fat content of wheat protein isolates. The protein is treated with acidified alcohol to remove fats down to a residual range from .05-.25 and also to give a very pleasing light colored product. The acids used include organic acid such as lactic acid, tartaric acid, citric acid etc.. (see col. 2 line 56 through col. 3 line 5.

Since Murphy et al disclose the use of wheat protein isolate, it is inherent the protein isolate comprises wheat gluten. Murphy et al teach to use a commercially

available source of wheat protein isolate such as LSI product from Liberty Enterprises. Thus, it would have been obvious to use any known commercially available source such as the Arise 5000 which contains the lactic acid and the sulfite. Substituting one commercially available source for another commercially available source would have been an obvious matter of choice. It would also have been obvious to one skilled in the art to use the wheat protein isolate that is treated with lactic acid as taught by Grace et al to reduce the fat content of the protein which furthers the objective of Murphy to making a reduce-fat or fat free product. Murphy et disclose donuts; thus, it would have been obvious to one skilled in the art to make cake donut because that is a conventional type of donut.

Claims 5-9, 11-15, 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prosise in view of Ahmedna et al in the article "Solubilized Wheat Protein Isolate: Functional Properties and Potential Food Applications", applicant's disclosure of prior art and Grace et al.

Prosise disclose a composition for making donut and a fried donut. The composition does not contain dried milk as shown in example 1. Prosise also discloses forming cake donut as shown in example 2.

Prosise does not disclose adding wheat protein isolate in the amount claimed.

Ahmedna et al teach that solubilized wheat protein isolate has water holding and fat absorption capacities. The fat absorption is the highest among the proteins tested and would perform well in foods such as low-fat bakery products and doughnut. (see pages 7-8)

Grace et al disclose a method for reducing the fat content of wheat protein isolates. The protein is treated with acidified alcohol to remove fats down to a residual range from .05-.25 and also to give a very pleasing light colored product. The acids used include organic acid such as lactic acid, tartaric acid, citric acid etc.. (see col. 2 line 56 through col. 3 line 5.

It would have been obvious to one skilled in the art to add wheat protein isolate to the Prosize product so that the protein can absorb the fat to reduce the fat content of the product; Ahmedna et al teach the wheat protein isolate performs well in low-fat doughnut which is the product disclosed in Prosize. Ahmedna et al do not disclose the specific components of the wheat protein isolate. It would have been obvious to one skilled in the art to use any known commercially available source of wheat protein isolate such as the Arise 5000 which contains the lactic acid and the sulfite. It would also have been obvious to one skilled in the art to use the wheat protein isolate that is treated with lactic acid as taught by Grace et al to reduce the fat content of the protein which furthers the objective of Prosize which is to make a reduce-fat product. It would have been obvious to one skilled in the art to determine the amount; this is a result-effective variable which can readily be determined by one skilled in the art through routine experimentation.

In the response filed 9/18/08, applicant argues none of the references teaches the limitation of the wheat protein isolate containing lactic acid and sulfite. New rejections are made above to address the new limitation.

Applicant's arguments with respect to claims 5-9, 11-19 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 21, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794